

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
SIMON WRECKING, INC., and)	
SIMON RESOURCES, INC.,)	
)	
Defendants.)	
)	

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

NATURE OF ACTION

1. This is a civil action brought pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") 42 U.S.C. § 9607, seeking reimbursement of response costs incurred and to be incurred by the United States in response to the release or threat of release of hazardous substances at the Malvern TCE Superfund Site, in Chester County, Pennsylvania ("Site"). The United States also seeks a declaratory judgment under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), establishing Defendants' liability that will be binding in any subsequent action by the United States against Defendants to recover further response costs.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607 and 9613(b).

3. Venue is proper in this judicial district pursuant to 42 U.S.C. §§ 9607(a) and 9613(b), because the claims stated herein arose in this judicial district and because, at all times relevant to events forming the basis of this Complaint, Defendants were doing business in this judicial district.

DEFENDANTS

4. Defendant Simon Wrecking, Inc. (“Simon Wrecking”), is a corporation incorporated under the laws of the Commonwealth of Pennsylvania. Defendant Simon Resources, Inc. (“Simon Resources”), is a corporation incorporated under the laws of the State of Delaware.

GENERAL ALLEGATIONS

5. From 1952 until 1992, the Chemclene Corporation (“Chemclene”) reclaimed and sold industrial cleaning solvents at the Site, including trichloroethene (“TCE”); 1,1,1-trichloroethane (“1,1,1-TCA”); and perchloroethylene (“PCE”).

6. As part of its operations, Chemclene received, stored, and processed used solvents and other wastes that included hazardous substances.

7. Hazardous substances were disposed of and released into the environment, including the Site soils and groundwater, as a result of Chemclene’s operations.

8. Subsurface migration of contaminated groundwater from the Site has contaminated the aquifer beneath the Site property.

9. The Site was listed on the National Priorities List in September 1983. CERCLA Section 105, 42 U.S.C. § 9605, 40 C.F.R. Part 300, Appendix B.

10. Commencing in 1993, EPA conducted a variety of response actions at the Site, including periodic sampling, and the maintenance of home wells sunk into the contaminated aquifer.

11. EPA issued a Record of Decision (“ROD”) in November 1997. The selected ROD remedy included soil removal, capping, and groundwater pumping and treatment.

12. Based on its review of Site records kept by Chemclene, EPA identified a group of potentially responsible parties (“PRPs”) for the Site. These PRPs were generators or transporters of hazardous substances sent to the Site for processing and/or disposal.

13. The Defendant Simon Wrecking was identified as a PRP through EPA’s review of Site records.

14. During the period commencing approximately in February 1966 until approximately January 1981, Simon Wrecking engaged in the business of waste hauling and scrap metal recycling.

15. During the period commencing approximately in February 1966 until approximately January 1981, Simon Wrecking transported drums containing hazardous wastes to the Site for recycling or disposal.

16. On or about 1979, Simon Resources acquired the common stock of Simon Wrecking,

17. Simon Wrecking was merged into Simon Resources on or about January 1, 1981; Simon Resources acquired the assets of Simon Wrecking, and continued to conduct the business

of Simon Wrecking from the same location, with the same employees and equipment, until approximately 1992.

FIRST CLAIM FOR RELIEF

18. The foregoing paragraphs are realleged and incorporated herein by reference.

19. Defendants are "persons" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9602(21).

20. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21. "Hazardous substances," within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) were disposed of at the Site.

22. There has been a "release or threatened release," as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of hazardous substances into the environment at the Site.

23. The Regional Administrator of EPA Region III, acting pursuant to his delegated authority, determined that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of the release or threatened release of hazardous substances at the Site.

24. The United States has incurred costs authorized by Section 104 of CERCLA, 42 U.S.C. § 9604, as a result of the release or threat of release of hazardous substances from the Site.

25. The United States' actions at the Site were "response" actions as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

26. The costs incurred by the United States in conducting the response actions were incurred in a manner not inconsistent with the National Contingency Plan, promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605.

27. Defendants are among the classes of persons described in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Specifically, Defendants are persons who accepted hazardous substances for transport to disposal or treatment facilities at the Site, within the meaning of CERCLA Section 107(a)(4), 42 U.S.C. § 9607(a)(4).

28. Defendants are jointly and severally liable to the United States for the payment of response costs incurred by the United States as a result of the response actions taken at the Site, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

SECOND CLAIM FOR RELIEF

29. The foregoing paragraphs are realleged and incorporated herein by reference.

30. The United States will continue to incur response costs in connection with the Site until the Site is cleaned up and all response costs are paid by responsible parties.

31. Defendants are subject to a declaratory judgment under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), on liability that will be binding on any subsequent actions to recover further response costs or damages.

PRAYER FOR RELIEF

WHEREFORE, the United States requests that the Court enter a judgment against Defendants as follows:

A. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), order the Defendants to pay all response costs incurred by the United States in response to the release and threat of release of hazardous substances at the Site;

B. Enter a declaratory judgment of liability under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), against Defendants that will be binding on any subsequent action to recover further response costs or damages;

C. Award Plaintiff its costs and disbursements in this action; and

D. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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